

III. REMARKS

Claims 1-23 are pending in this application. By this Amendment, claim 15 has been amended and claim 23 has been added. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

In the Office Action, claims 1, 5-16, and 20-22 are rejected under 35 U.S.C. § 103(a) over German Patent No. 21 13 358 to Joseph Vögele AG (the Vögele patent) in view of U.S. Patent No. 4,181,449 to Lenker. This rejection is respectfully traversed. Applicants assert that the Office is reading language out of the pending claims and misinterpreting the function of the Lenker device.

The Office asserts that the Vögele patent teaches a vertically movable compaction member having an angle that “appears to be less than 45 degrees.” Office Action at 2. In addition, the Office asserts that the Lenker reference “teaches that it [sic] using a bias enhances the quality of an angled layer of pavement (column 5, lines 24-31),” and that “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a bias with the apparatus of Vögele for this purpose.” Office Action at 2.

Assuming, *arguendo*, that a suggestion or motivation to combine the teachings of the Vögele patent and Lenker reference exists, Applicants urge that such a combination fails to make obvious any pending claim of the present application. The Lenker reference teaches a compaction surface, only a portion of which is independently movable against a spring bias. For example, the Lenker reference reads:

The plate 37 is connected to screed 5 for support thereby by the connecting means described following:

The opposite edges of the bottom plate 37 fixedly mount hinges 40 and 41 (FIG. 5) which are preferably the piano type and extend co-extensive with the plate. The hinge 40 is fixed to an inboard plate 42 and the hinge 41 is fixed to an outboard plate 43.

The inboard plate 42 is co-extensive with the bottom plate 37 and is fixed to the screed end plate 31 by nut/bolt means 44. The outboard plate 43 is parallel to the inboard plate 42 and co-extensive therewith. The outboard plate slidingly engages the machine side plate 4.

Column 3, lines 36-47 (emphasis added).

As is clear from the above passage and FIGS. 5-8 of the Lenker reference, a medial edge of the compaction surface is fixed to the screed while a lateral edge moves vertically. As such, only one side of the compaction surface is biased. The result is a compaction surface having an angle relative to the surface being paved that varies in response to changing pressure against the bias.

Combining such variation in compaction surface angle with the teachings of the Vögele patent, *i.e.*, that of a compaction member having a set angle, does not make obvious any pending claim of the present application. That is, the teachings of the Vögele patent and the Lenker reference, taken together, do not teach a compaction surface having a set angle relative to a paving surface and which is independently vertically movable against a bias. Applicants submit, therefore, that claim 1 is not obvious over the Vögele patent in view of the Lenker reference and respectfully request withdrawal of the rejection.

While claim 15 is believed allowable for the reasons given above with respect to claim 1, it has been amended to more clearly point out that the compaction surface “is fixed at an edge angle such that a final angle of paving material after compaction is less than or equal to about 45° relative to a surface upon which the ramp is formed.” Accordingly, for each of the reasons given above with respect to claim 1 and in view of the above amendment, Applicants assert that claim 15 is allowable and respectfully request withdrawal of the rejection.

New claim 23 recites that the “compaction member, in its entirety, is independently vertically movable against a bias.” That is, unlike the Lenker device, in which the angle of the

compaction surface changes due to only a portion of the compaction member being vertically movable, the device of new claim 23 comprises a compaction member which is vertically movable, in its entirety, and at a set angle relative to the surface upon which the ramp is formed. Accordingly, applicants assert that new claim 23 is allowable over the Vögele patent and the Lenker reference, whether viewed separately or together.

Regarding claim 7, the Office asserts that “the coupling device (2, 5) and the piece (not labeled) which extends outwardly from, and in the opposite direction to the compaction member (3), meet the recitation of a pair of support members.” Office Action at 2. While it is somewhat unclear which unlabeled piece the Office is referring to, Applicants assume that the Office is referring to the bottom, horizontally-oriented portion of external surface 5 to which anterior end 4 of sheet-metal guiding piece 3 terminates. Regardless of the functions served by the cited elements, it is clear from the Vögele figure that only the unlabeled piece contacts sheet-metal guiding piece 3. Thus, Applicants assert that the Vögele device neither teaches nor makes obvious “a pair of support members coupled to the compaction surface and the paving material directing member,” as recited in claim 7. Accordingly, Applicants respectfully request withdrawal of the rejection.

Regarding claims 8-12, the Office asserts that “the unlabeled piece has a rounded leading edge adapted to engage the surface.” Office Action at 3. Applicants assert that the above arguments made with respect to claims 1, 5, and 7 are equally applicable to claim 8, since claim 8 depends, directly or ultimately, from claims 1, 5, and 7. Accordingly, Applicants respectfully request withdrawal of the rejection.

The Office further asserts (presumably with respect only to claim 9) that the “[unlabeled] piece meets the recitations of a trailing directing member.” Office Action at 3. Applicants assert that to construe the unlabeled piece of the Vögele device as reading on claim 9 is to, *inter alia*,

read the terms “trailing” and “directing” out of the claim. As is clear from FIG. 8A and the following quotation from paragraph 39 of the present application, the trailing directing member must reside behind (with respect to a direction of travel) the directing member and be capable of directing paving material: “directing member 390 includes a trailing directing member 404 extending substantially in a direction of travel from a trailing edge 406 of paving material directing member 390.” Application at ¶ 39. Applicants assert that the unlabeled piece of the Vögele device neither directs paving material nor trails a directing member and cannot, therefore, teach or make obvious the limitation of claim 9. Accordingly, Applicants request withdrawal of the rejection.

Next, regarding claims 12-14, the Office asserts that “the limitations regarding the edge angle are met by the portion (6) of the compaction member.” Office Action at 3. Applicants assert, however, that the above arguments made with respect to claim 1 are equally applicable to claims 12-14, since each directly or ultimately depends from claim 1. Accordingly, Applicants respectfully request withdrawal of the rejection.

The Office goes on to state (presumably with respect only to claim 14) that “[r]egarding the specific angle of 35 degrees, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used this angle in order to increase safety for users of the finished product, as is well known in the art.” Office Action at 3. Applicants respectfully assert that the Office has provided no evidence to support such a conclusion regarding the common knowledge in the art. *See* MPEP § 2144.03 (“It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work

recognized as standard in the pertinent art.” Emphasis in original). Accordingly, Applicants assert that the Office has failed to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a). See MPEP §§ 706.02(j), 2142.

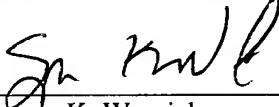
In addition, Applicants assert that in making this rejection, the Office has read out of claim 14 the phrase “and the compaction angle.” Applicants cannot see how any element of the Vögele device could be construed as a compaction angle, as that phrase is used in the present invention, and the Office has failed to identify such an element in the Vögele device. Accordingly, Applicants assert that the Vögele device neither teaches nor makes obvious the use of a compaction angle and respectfully request withdrawal of the rejection.

Finally, the Office states that “[r]egarding claims 15, 16 and 20-22, there is an end gate (5) and a screed (not labeled).” Office Action at 3. However, for each of the reasons given above with respect to the independently vertically movable compaction member, the trailing directing member, and the trailing compaction surface, Applicants assert that the Vögele patent neither teaches nor makes obvious the limitations of these claims. Accordingly, Applicants respectfully request withdrawal of the rejection.

Applicants appreciate the Office’s indication that claims 2-4 and 17-19, while objected to as depending from a rejected base claim, would be allowable if rewritten in independent form. However, for each of the reasons given above, Applicants assert that such amendment is unnecessary.

In view of the foregoing and for each of the reasons given above, Applicants respectfully request withdrawal of the rejections and objections and allowance of the application. Should the Examiner require anything further from Applicants, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,



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